

**DRAFT****PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA****Telecommunications Division  
Carrier Branch****RESOLUTION T-16650  
May 2, 2002****R E S O L U T I O N**

RESOLUTION T-16650. PACIFIC BELL TELEPHONE COMPANY.  
REQUEST TO REVISE SCHEDULE CAL.P.U.C. NO. A2.  
GENERAL REGULATIONS, 2.1 RULES, 2.1.12 RULE NO. 12 –  
DISCLOSURE OF RATES AND CHARGES AND INFORMATION  
TO BE PROVIDED TO THE PUBLIC, PURSUANT TO ORDERING  
PARAGRAPH 7 OF DECISION NO. 01-09-058 TO MODIFY  
TARIFF RULE 12.

BY ADVICE LETTER NO. 22435, FILED ON NOVEMBER 26, 2001;  
SUPPLEMENTED BY ADVICE LETTER NO. 22435-A, FILED ON  
DECEMBER 21, 2001; SUPPLEMENTED BY ADVICE LETTER NO.  
22435-B, FILED ON JANUARY 29, 2002; SUPPLEMENTED BY  
ADVICE LETTER NO. 22435-C, FILED ON MARCH 5, 2002; AND  
AGAIN SUPPLEMENTED BY ADVICE LETTER NO. 22435-D,  
FILED ON MARCH 12, 2002.

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**SUMMARY**

On September 20, 2001, we issued Decision (D.) 01-09-058, in which we ordered Pacific Bell Telephone Company (Pacific) to modify its Tariff Rule 12 to create a clear distinction between its customer service and sales or marketing efforts.

On November 26, 2001, Pacific filed Advice Letter (AL) 22435 modifying its Tariff Rule 12 to comply with the Ordering Paragraph (OP) 7 of the Commission decision. Pacific also attached a sheet on its "Code of Business Conduct" to comply with OP 13 of D.01-09-058. Pacific filed four supplements to this advice letter.

ORA and Pac-West filed protests. We partially adopt ORA's protest and deny Pac-West's protest for reasons explained below.

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Pacific's AL 22435, with the exception of attached SCHEDULE CAL. P.U.C. No. A2, 6<sup>th</sup> Revised Sheet 84.1 and the attached sheet on "Code of Business Conduct", complies with OP 7 of D.01-09-058. Pacific's supplements AL 22435-A, 22435-B and 22435-C, do not fully comply with OPs 7 and 13 of D.01-09-058 as amended by D.02-02-027. On March 12, 2002, Pacific filed AL 22435-D that modifies Tariff Rule 12 in compliance with OP 7 of D.01-09-058. However, Pacific still has not modified its standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices in accordance with OP 13 of D.01-09-058. Therefore, we order Pacific to submit, within 5 days of the effective date of this resolution, a new advice letter to comply with OP 13 of D.01-09-058, setting out the company's standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices. Pacific is notified that if it fails to comply with this resolution and/or fails to fully comply with D.01-09-058 as amended by D.02-02-027, Pacific will be subject to penalties in accordance with Public Utilities Code Sections 2107 and 2108.

**BACKGROUND**

On April 6, 1998, the Utility Consumers' Action Network (UCAN) filed a complaint (Case (C.) 98-04-004) with this Commission regarding Pacific's marketing practices and strategies in marketing optional services to its residential customers. We consolidated similar complaints (C.98-06-003 filed on June 1, 1998, C.98-06-027 filed June 8, 1998; and C.98-06-049 filed June 24, 1998) by the Greenlining Institute and the Latino Issues Forum (Greenlining) and others, with the UCAN's complaint (C. 98-04-004), into one proceeding.

In 1997, Pacific instituted a policy of marketing optional services, such as Call Waiting and Caller ID, every time a customer calls Pacific, regardless of the customer's purpose in calling. Pacific instructed its service representatives to ask each caller, at the beginning of every call, for permission to access the subscriber's proprietary network information (CPNI) so that Pacific can market its own or its Affiliate's products on every call. If the customer denied permission for Pacific's representative to access its CPNI, the Pacific representative was still instructed to proceed to market only Pacific's products. Pacific argued that it has a constitutional right to offer its products and services to residential customers in California.

On September 20, 2001, we issued D.01-09-058 addressing the concerns raised by the various complainants in their respective cases. In D.01-09-058, we addressed a number of Pacific's marketing practices for its optional services to residential

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customers, finding that some of Pacific's marketing practices violate statutory and decisional laws. In OP 7 of D.01-09-058, we ordered Pacific, within 45 days of the effective date of this order, to file an advice letter modifying Tariff Rule 12 to create a clear distinction between customer service and sales or marketing efforts in conformance with the directives set out in OP 8 and as described in Section 9.3 of D.01-09-058.

Pacific requested an extension of time to file an advice letter to comply with the decision, and we granted Pacific's request. On November 26, 2001, Pacific filed AL 22435 modifying its Tariff Rule 12 and attached with it a sheet describing Pacific's "Code of Business Conduct" to comply with OP 7 and OP 13, respectively. The Telecommunication Division staff (TD) reviewed AL 22435 and informed Pacific that its filing does not fully comply with D.01-09-058.

On December 17, 2001, ORA filed protest to AL 22435.

On December 17, 2001, Working Assets Funding Services, Inc.; d/b/a Working Assets Long Distance (U-5233-C) ("Working Assets") and Pac-West Telecomm, Inc. (U-5266-C) ("Pac-West") filed a protest to Pacific's AL 22435.

On December 21, 2001, Pacific filed a supplemental AL 22435-A revising its Tariff Rule 12. TD reviewed and informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-A, does not comply with D.01-09-058.

On January 29, 2002, Pacific filed supplemental AL 22435-B. TD reviewed and informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-B, still does not comply with D.01-09-058.

On February 7, 2002, we issued D.02-02-027, amending some sections of D.01-09-058 including some ordering paragraphs.

On March 5, 2002, Pacific filed supplemental AL22435-C that reflected some amendments made in D.02-02-027. TD reviewed AL 22435-C and again informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-C and its filed sheet on "Code of Business Conduct", still do not comply with OP 7 and OP 13 of D.01-09-058.

On March 12, 2002, Pacific filed supplemental AL 22435-D modifying its Tariff Rule 12.

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**NOTICE/PROTESTS**

Pacific states that a copy of the Advice Letter and related tariff sheets were mailed to competing and adjacent utilities and/or other utilities, and interested parties, as requested. Advice Letter 22435 was listed in the Commission's Daily Calendar of November 28, 2001; Advice Letter 22435-A was listed in the Commission's Daily Calendar of December 28, 2001; Advice Letter 22435-B was listed in the Commission's Daily Calendar of February 1, 2002; and Advice Letter 22435-C was listed in the Commission's Daily Calendar of March 8, 2002. Advice Letter 22435-D was listed in the Commission's Daily Calendar of March 15, 2002. ORA and Pac-West filed timely protests to Pacific's Advice Letter 22435.

**DISCUSSION**

On November 26, 2001, Pacific filed AL 22435 to revise Schedule Cal. P.U.C. No. A2 General Regulations, 2.1 Rules, 2.1.12 Rule No. 12 – Disclosure of Rates and Charges and Information to be Provided to the Public, Pursuant to OP 7 of D.01-09-058 to modify Rule 12. Pacific attached a sheet on “Code of Business Conduct” to comply with OP 13 of D.01-09-058.

TD reviewed Pacific's AL 22435 and then informed Pacific that the revised Tariff Rule 12, as shown on Schedule CAL. P.U.C. No. A2, 6<sup>th</sup> Revised Sheet 84.1, filed with AL 22435 does not comply with the directives described in OP 7 of D.01-09-058. TD also informed that the attached sheet on “Code of Business Conduct” does not comply with OP 13 of D.01-09-058.

On December 21, 2001, Pacific filed a supplemental AL 22435-A modifying its Tariff Rule 12. TD reviewed the supplement and informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-A, still does not comply with D.01-09-058.

On January 29, 2002, Pacific filed a supplemental AL 22435-B after making some modifications to its previously filed Tariff Rule 12. TD informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-B, still does not comply with D.01-09-058.

On February 7, 2002, we issued D.02-02-027 in which we amended some sections as well as some ordering paragraphs of D.01-09-058.

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On March 5, 2002, Pacific filed supplemental AL22435-C that reflected some amendments made in D.02-02-027. TD reviewed AL 22435-C and again informed Pacific that its revised Tariff Rule 12, as shown in the tariff sheets filed with AL 22435-C and its filed sheet on “Code of Business Conduct”, still does not comply with OP 7 and OP 13 of D.01-09-058.

On March 12, 2002, Pacific filed supplemental AL 22435-D modifying its Tariff Rule 12 that finally meets the requirements of OPs 1 and 7 of D.01-09-058 as amended by D.02-02-027. Schedule CAL. P.U.C. No. A2, 6<sup>th</sup> Revised Sheet 84.1, filed with AL 22435-D complies with the directives described in OP 7 of D.01-09-058 as amended by D.02-02-027 and is therefore accepted.

In AL 22435, Pacific stated that it would adhere to OP 13 of D.01-09-058 through the Code of Business Conduct, which is subject to change and addresses the standards for internal corporate rules and practices that prohibits unfair, misleading, and predatory sales practices. Pacific filed a sheet describing its “Code of Business Conduct” with Advice Letter 22435.

Pacific’s attached sheet describing its “Code of Business Conduct” does not address Pacific’s proposed internal rules and practices that would prohibit unfair, misleading, and predatory sales practices. In the Slamming and Cramming section of the attached sheet, it is written that “Slamming, cramming, and other fraudulent sales practices are illegal and would not be tolerated. . .” There is no reference at all to unfair, misleading and predatory sales practices. Also fraudulent sales practices are not defined on the sheet attached with AL 22435. It is not clear what types of sales are considered “fraudulent sales” by Pacific. We note that Pacific’s code of business conduct has been in place for some time and so far it has not deterred Pacific from its unfair, misleading and predatory sales practices that are pointed out in D.01-09-058. Therefore, it does not meet the requirements of OP 13 of D.01-09-058. Therefore, within 5 days from the effective date of this resolution, Pacific is ordered to file a new advice letter setting out the company’s standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices.

In AL22435-D, Pacific requests that the effective date of this advice letter be 90 days after final conclusion of all legal appeals. TD estimates that over 6 months have passed since D.01-09-058 was issued and over 140 days have passed since Pacific filed its AL 22435 to comply with this decision. Pacific filed its supplemental AL 22435-A 25 days after AL22435 was filed; supplemental AL22435-B was filed 64 days after AL 22435; supplemental AL 22435-C was filed 99 days after AL22435; and supplemental AL 22435-D was filed was filed 106

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after AL 22435 originally was filed. By the time this resolution is approved another 50 plus days would have passed after AL 22435-D was filed. In D.01-09-058, the Commission clearly spelled out what modifications are to be included in Pacific's Tariff Rule 12. In D.02-02-027, the Commission made some minor amendments to the language that is to be included in Tariff Rule 12. It was a compliance filing and Pacific could have included the Commission language verbatim in Tariff Rule 12. It appears that Pacific is attempting to delay the implementation of Tariff Rule 12 as modified by the Commission. We believe that more than enough time has already passed in implementing our modified Tariff Rule 12. We make this resolution effective on the day it is approved.

In its AL No. 22435 and its first three supplements, Pacific failed to fully comply with OP 7 of D.01-09-058. Pacific, in its AL 22435 and its four supplements, still has not complied with OP 13 of D.01-09-058. We put Pacific on notice that if Pacific further fails to comply with this Commission resolution and/or fails to fully comply with the Commission D.01-09-058 as amended by D.02-02-027, Pacific will be penalized in accordance with Public Utilities Code Sections 2107 and 2108.

On December 17, 2001, ORA filed protest to AL 22435. In its protest, ORA states that in the Slamming and Cramming section of Pacific's Code of Business Conduct, Pacific refers to changes to a customer's service provider or services and to the necessity of obtaining consent of the customers. The term used in both the slamming and cramming statutes is "subscriber", and that is the term that should be used here.

On December 26, 2001, Pacific filed its response to both protests of Advice Letter 22435 recommending that ORA's and Pac-West's protests be denied.

In its response, Pacific points out that the Commission has used the term "customer" and not "subscriber" in this decision. In Pacific's tariffs, "subscriber" and "customer" have the same definition and in its tariffs these terms have been used interchangeably with the same meaning. Therefore, there is no need to change the term "customer" to "subscriber" as recommended by ORA in its protest.

ORA recommends that the final tariff language specify that the subscriber's or customer's request shall be resolved first before Pacific asks for "permission to access the subscriber's proprietary network information." We agree with ORA's recommendation. Also, our modified Tariff Rule 12 provides clear directives on this issue. Thus, ORA protest is partially adopted.

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On December 17, 2001, Working Assets Funding Services, Inc.; d/b/a Working Assets Long Distance (U-5233-C) ("Working Assets") and Pac-West Telecomm, Inc. (U-5266-C) ("Pac-West") filed a protest to Pacific's AL 22435. In its protest, Working Assets and Pac-West challenge the advice letter "insofar as" Pacific's "sales practices will include the marketing of long distance services of SBC services". Working Assets and Pac-West concede that D.01-09-058 does not address joint marketing of local and long distance services by Pacific.

Pacific is not yet authorized to provide long distance service to California customers. In D.01-09-058, we did not address the joint marketing by Pacific of its local services with SBC's long distance services. This resolution is not the place to open discussion on this issue. Working Assets and Pac-West can bring this issue to this Commission's attention when and if Pacific's sales practices include the marketing of SBC's long distance services. Therefore, at this time, we reject the protest to AL 22435 filed by Working Assets and Pac-West.

The draft resolution of the Telecommunications Division in this matter was mailed to the parties in accordance with PU Code Section 311(g)(1). Comments were filed on (date) by (name of parties) and reply comments were filed on (date) by (name of parties). [disposition of comments/revisions to draft resolution]

**FINDINGS**

1. On April 6, 1998, the Utility Consumers' Action Network (UCAN) filed a complaint (C.98-04-004) with this Commission regarding Pacific's marketing practices and strategies in marketing optional services to its residential customers.
2. We consolidated similar complaints (C.98-06-0003 filed on June 1, 1998, C.98-06-027 filed June 8, 1998; and C.98-06-049 filed June 24, 1998) by the Greenlining and others, with the UCAN's complaint (C.98-04-004), into one proceeding.
3. In 1997, Pacific instituted a policy of offering optional services, such as Call Waiting and Caller ID, every time a customer calls Pacific, regardless of the customer's purpose in calling.
4. On September 20, 2001, we issued D.01-09-058 addressing the concerns raised by various complainants. In D.01-09-058, we addressed a number of Pacific's practices for marketing its optional services to residential customers, finding

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that some of Pacific's marketing practices violate statutory and decisional laws.

5. In OP 7 of D.01-09-058, we ordered Pacific, within 45 days of the effective date of this order, to file an advice letter modifying Tariff Rule 12 to create a clear distinction between customer service and sales or marketing efforts in conformance with the directives set out in OP 8 and as described in Section 9.3 of D.01-09-058.
6. In OP 13 of D.01-09-058, we ordered Pacific, within 45 days of the effective date of this order, to submit an advice letter setting out the company's standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices.
7. Pacific requested an extension of time to file an advice letter to comply with the decision, and we granted Pacific's request.
8. On November 26, 2001, Pacific filed AL 22435 revising its Tariff Rule 12 and included a sheet on "Code of Business Conduct" to comply with OPs 7 and 13 of D.01-09-058, respectively.
9. TD reviewed AL 22435 and then informed Pacific that the revised Tariff Rule 12, as shown on Schedule CAL. P.U.C. No. A2, 6<sup>th</sup> Revised Sheet 84.1, filed with AL 22435 does not comply with the directives described in the OP 7 of D.01-09-058. TD also informed Pacific that its sheet on Code of Business Conduct does not meet the requirements of OP 13 of D.01-09-058.
10. On December 17, 2001, ORA filed protest to AL 22435.
11. On December 17, 2001, Working Assets Funding Services, Inc.; d/b/a Working Assets Long Distance (U-5233-C) ("Working Assets") and Pac-West Telecomm, Inc. (U-5266-C) ("Pac-West") filed a protest to Pacific's AL 22435.
12. On December 21, 2001, Pacific filed a supplemental AL 22435-A.
13. On December 26, 2001, Pacific filed its response to both protests.
14. On January 29, 2002, Pacific filed a supplemental AL 22435-B.
15. On February 7, 2002, we issued D.02-02-027 amending some portions of D.01-09-058.



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16. On March 5, 2002, Pacific filed a supplemental Advice Letter 22435-C.
17. Pacific failed to fully comply with OPs 7 and 13 of D.01-09-058 in its AL 22435 and its first three accompanying supplements.
18. On March 12, 2002, Pacific filed a supplemental AL 22435-D. In its AL 22435-D, Pacific modified its Tariff Rule 12 that fully complies with OP 7 of D.01-09-058.
19. Pacific's attached sheet on "Code of Business Conduct" to comply with OP 13 of D.01-09-058, does not address Pacific's unfair, misleading and predatory sales practices as required by OP 13. Therefore, Pacific is ordered, within 5 days of the effective date of this resolution, to submit a new advice letter setting out the company's standards for proposed internal corporate rules and practices that would prohibit unfair, misleading and predatory sales practices as required by OP 13.
20. In its tariffs, Pacific does not make a distinction between the "customer" and the "subscriber". Therefore, there is no need to change "customer" to "subscriber" as recommended by ORA in its protest.
21. In D.01-09-058, we did not address the joint marketing by Pacific of Pacific's local services with SBC's long distance services. This resolution is not the appropriate forum to open discussion on this issue.
22. Pacific in its AL 22435 and its first three supplements failed to fully comply with D.01-09-058 as amended by D.02-02-027. Therefore, we put Pacific on notice that if Pacific further fails to comply with this Commission resolution and/or fails to fully comply with the Commission D.01-09-058 as amended by D.02-02-027, Pacific will be subject to penalties in accordance with Public Utilities Code Sections 2107 and 2108.
23. ORA's protest is partially adopted as shown in this resolution.
24. Working Assets' and Pac-West's joint protest is denied.
25. Pacific's request to make this resolution effective 90 days after final conclusion of all its legal appeals is denied.

**THEREFORE, IT IS ORDERED that:**

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1. With the exception of attached SCHEDULE CAL. P.U.C. No. A2, 6<sup>th</sup> Revised Sheet 84.1 and the attached sheet on “Code of Business Conduct”, Pacific’s Advice Letter 22435, is approved. In addition, Pacific’s supplemental AL 22435-D and accompany tariff sheet modifying Tariff Rule 12 to comply with OP 7 of D.01-09-058 is approved. Pacific’s supplemental ALs 22435-A, 22435-B, and 22435-C do not comply with OPs 7 and 13 of D.01-09-058 and are therefore not approved.
2. Within 5 days from the effective date of this resolution, Pacific shall submit a new advice letter to comply with OP 13 of D.01-09-058 setting out the company’s standards for proposed internal corporate rules and practices that would prohibit unfair, misleading, and predatory sales practices.
3. We put Pacific on notice that if Pacific further fails to comply with this Commission resolution and/or fails to fully comply with the Commission D.01-09-058 as amended by D.02-02-027, Pacific will be subject to penalties in accordance with Public Utilities Code Sections 2107 and 2108.
4. ORA’s protest is partially adopted.
5. Working Assets’ and Pac-West’s joint protest is also denied.
6. Pacific’s request to make this resolution effective 90 days after final conclusion of all legal appeals is denied.

The effective date of this Resolution is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 2, 2002. The following Commissioners approved it.

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WESLEY M. FRANKLIN  
Executive Director

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STATE OF CALIFORNIA

GRAY DAVIS, *Governor*

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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

April 2, 2002

**TO: PARTIES TO PACIFIC BELL TELEPHONE COMPANY ADVICE  
LETTER 22435**

Enclosed is draft resolution T-16650 sponsored by Commissioner Wood. This will be on the agenda Commission meeting on May 2, 2002. The Commission may then vote on the resolution, or it may postpone a vote until later.

When the Commission votes on a draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare a different resolution. Only when the Commission acts does the resolution become binding on the parties.

Parties to the proceeding may submit comments on the draft resolution. An original and 2 copies of the comments, with a certificate of service, should be submitted to:

Daljit Singh, Utilities Engineer  
Telecommunications Division, Third Floor  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Parties may submit comments on the draft resolution within 15 days of its date of mailing. The date of submission is the date the comments are *received* by the Telecommunications Division. Parties must serve a copy of their comments on all persons on the service list attached to the draft resolution, all Commissioners, and the Director of the Telecommunications Division, on the same date that the comments are submitted to the Telecommunications Division.

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Comments shall be limited to 5 pages in length, plus a subject index listing the recommended changes to the draft resolution, a table of authorities and an appendix setting forth proposed findings and ordering paragraphs.

Comments shall focus on factual, legal, or technical errors in the proposed resolution. Comments which merely reargue positions taken in the advice letter or protests will be accorded no weight and should not be submitted.

Late-submitted comments will ordinarily be rejected. However, in extraordinary circumstances, a request for leave to submit comments late may be filed together with the proposed comments. An accompanying declaration under penalty of perjury shall be submitted setting forth all the reasons for the late submission.

Replies to comments may be submitted 5 days after comments are submitted and shall be limited to identifying misrepresentations of law, fact, or condition of the record contained in the comments of other parties. Replies shall not exceed three pages in length and shall be submitted and served in the same manner as comments.

/s/ Daljit Singh  
Daljit Singh, Utilities Engineer  
Telecommunications Division

Enclosures (Draft Alternate Resolution, Certificate of Service, Service List)

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**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of Draft Resolution T-16650 on all parties in this filing or their attorneys as shown on the attached list.

Dated April 2, 2002, at San Francisco, California.

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Daljit Singh

**NOTICE**

Parties should notify the Telecommunications Division, Third Floor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

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SERVICE LIST RESOLUTION T-16650

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